

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

DA'VETTA FLOWERS

PLAINTIFF

v.

No. 4:18-cv-577-DPM

KENDALL W. PENN, Major General,
Adjutant General for the State of Arkansas

DEFENDANT

ORDER

1. Pretrial and Trial Architecture. On the first day of trial—Tuesday, 7 December 2021—we'll have a final pretrial at 8:30 a.m. in courtroom 1A. We'll start with the venire at 9:30 a.m. We will pick an eight-person jury. Counsel should be prepared to open Tuesday afternoon. Each side gets twenty minutes. Flowers should also be prepared with a witness or two for Tuesday afternoon, if time allows. Otherwise, we'll start the proof at 8:30 Wednesday morning.

2. Jury Instructions. The Court is attaching its working drafts of (1) the *voir dire*, (2) the preliminary instructions, (3) the final instructions, and (4) the verdict form. Note the Court's juror-questions drill. Please file any objection to, or suggestion about, the *voir dire* and preliminary instructions by noon on Friday, 3 December 2021. There is no need to comment at this point on the draft final instructions or verdict form. We'll work on both during the trial.

The Court adds these thoughts on the retaliation claim. It was not covered in detail in the summary judgment Order. An EEO investigation was mentioned. Flowers's charge and complaint specify some instances in 2017 where she says she complained about allegedly discriminatory practices in the police department. Her trial brief mentions her revisions to the hiring committee policy and her complaints to Department supervisors about hiring processes. The Court is confident that all this was explored in discovery. And the Court is inclined to allow evidence about these things, which appear to be protected activity predating Flowers's non-promotion. This does not open the door to evidence about what Flowers's charge called harassment and disparate treatment in general. The retaliation-related proof must be focused on Flowers's protected activity.

3. Witnesses and Exhibits. By the close of business on Wednesday, 1 December 2021, the parties must submit their final lists of witnesses and exhibits, the original pre-marked exhibits, and the Court's courtesy copy, in three-ring binders to Little Rock chambers. Please also include an electronic copy of each item. If the parties plan to use electronic exhibits, they should have paper copies available as a fall-back. The electronic exhibits should also be pre-marked.

4. *Voir Dire*. The Court will do most of the questioning, with follow-up by each side—ten minutes at most. Please focus your questioning. *Voir dire* is not a time to explain the law or the burden of

proof, to explain what the case is about, to seek commitments, or to pump the potential jurors full of fairness. Instead, please ask lean questions about potential jurors' experiences and views to ferret out bias. If the parties would prefer to have the Court explore certain subjects, please submit a list of those subjects for consideration by noon on 3 December 2021.

5. Objections. Avoid speaking objections during the trial. A word or two will do. If the Court needs to hear more, we'll have a hall conference.

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

29 November 2021